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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 DUWAYNE JACKSON, ) NO. ED CV 13-01765-JVS (AS)  
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ORDER OF DISMISSAL

18 On September 27, 2013, Petitioner filed a "Petition for Writ  
19 of Habeas Corpus By a Person in State Custody" ("the Petition").  
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21 The Petition challenges Petitioner's 2002 state court  
22 convictions for attempted murder and assault with a firearm, in  
23 violation of California Penal code §§ 664/187(a) and 245(a)(2) and  
24 the sentence imposed for those convictions. (Pet. at 2.) Although  
25 Petitioner did not identify his prior federal habeas petition in  
26 response to question 10 of the form Petition, the Petition  
27 acknowledged that prior petitions had been dismissed with prejudice  
28 as time-barred, and identified case number ED CV 06-00602-CJC(AN)

1 as an example. The referenced case involved a previous challenge  
2 of this same conviction in a habeas petition filed in this Court in  
3 2002. See Dwayne Jackson v. L.E. Scribner, ED CV 06-00602 CJC(AN)  
4 ("the prior habeas action"). On August 4, 2006, the Court  
5 dismissed the prior habeas action with prejudice as time-barred and  
6 entered Judgment in the prior habeas action. (Id.; Dkt. Nos. 4-5.)  
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8 The Court must dismiss the present Petition in accordance with  
9 28 U.S.C. § 2244(b) (as amended by the "Antiterrorism and Effective  
10 Death Penalty Act of 1996"). Section 2244(b) requires pre-approval  
11 from a Circuit Court of Appeals before a "second or successive"  
12 petition may be filed. See Burton v. Stewart, 549 U.S. 147, 157  
13 (2007) (where petitioner did not receive authorization from Court  
14 of Appeal before filing second or successive petition, "the  
15 District Court was without jurisdiction to entertain [the  
16 petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000)  
17 ("the prior-appellate-review mechanism set forth in § 2244(b)  
18 requires the permission of the court of appeals before 'a second or  
19 successive habeas application under § 2254' may be commenced"). A  
20 petition need not be repetitive to be "second or successive,"  
21 within the meaning of 28 U.S.C. § 2244(b). See, e.g., Thompson v.  
22 Calderon, 151 F.3d 918, 920-21 (9th Cir. 1998); Calbert v.  
23 Marshall, 2008 WL 649798, at \*2-4 (C.D. Cal. Mar. 6, 2008). The  
24 dismissal of a habeas petition as barred by the statute of  
25 limitations "constitutes an adjudication on the merits that renders  
26 future petitions under § 2254 challenging the same conviction  
27 'second or successive' petitions under § 2244(b)." McNabb v.  
28 Yates, 576 F.3d 1028, 1030 (9th Cir. 2009). Because Petitioner has

1 not yet obtained authorization from the Ninth Circuit Court of  
2 Appeals, this Court cannot entertain the present Petition. See  
3 Burton, 549 U.S. at 157.

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5 For the foregoing reasons, the Petition is denied and  
6 dismissed without prejudice.

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8 LET JUDGMENT BE ENTERED ACCORDINGLY.

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10 DATED: October 7, 2013

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JAMES V. SELNA  
UNITED STATES DISTRICT JUDGE

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17 PRESENTED this 4th day of  
18 October 2013, by:

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ALKA SAGAR  
21 UNITED STATES MAGISTRATE JUDGE  
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